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8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF MONTANA  
10 BILLINGS DIVISION

11 LEO BRADY, an individual,

12 Plaintiff,

13 vs.  
14

15 CLOUD PEAK ENERGY, INC., a  
16 Delaware corporation, and CLOUD  
17 PEAK ENERGY SERVICES  
18 COMPANY, a Delaware company,

Defendant.

Case No.: 1:18-cv-105-BLG-SPW

PLAINTIFF'S PRELIMINARY  
PRETRIAL STATEMENT

19 Plaintiff Leo Brady submits his Preliminary Pretrial Statement as follows:

20 **I. A Brief Factual Outline of the Case.**  
21

22 Leo Brady was employed by Cloud Peak Energy Services Company ("Cloud  
23 Peak") as a Control Room Operator at the Spring Creek Mine ("Spring Creek")  
24 located in Decker, Montana. In November of 2016, Mr. Brady informed his  
25 supervisor of his upcoming shoulder surgery. On December 14, 2016, Mr. Brady

1 obtained confirmation of his leave request and was provided paperwork he needed  
2 for his short-term disability (“STD”) leave. One of the documents Mr. Brady  
3 received as an “Essential Job Function” sheet for his position as a Control Room  
4 Operator. However, the Essential Job Function sheet reflected the essential job  
5 functions for a different mine, where the control room, mechanic, and utilities  
6 rotated positions. Whereas the positions at Spring Creek did not rotate positions and  
7 the physical demand on its Control Room Operators was much less.  
8  
9

10 On December 21, 2016, Mr. Brady underwent surgery and began STD.  
11 Pursuant to the terms of Mr. Brady’s STD, Mr. Brady was required to check in with  
12 Spring Creek’s human resources (“HR”) and update them with the status of his  
13 disability leave. Mr. Brady made weekly calls to HR from December 21, 2016  
14 through June 2, 2017. On or about May 10, 2017, Brady attended a training at  
15 Spring Creek and was told by the HR Director, Jean Fox, that he could not return to  
16 work unless he had a full release from his physician. Tonya Obermire, a HR  
17 representative and Ms. Fox both informed Mr. Brady that he would need to apply  
18 for long-term disability (“LTD”) if he could not return to work without a full release.  
19  
20

21 Pursuant to Mr. Brady’s conversation with Ms. Fox and Ms. Obermire, Mr.  
22 Brady applied for LTD. Mr. Brady was informed by Diane Solomon, who is in  
23 charge of employee leave at Spring Creek, that it would take a minimum of 30 days  
24 for his LTD to be processed. On June 2, 2017, Mr. Brady’s physician released him  
25

1 to return to work with accommodations, however, Mr. Brady was repeatedly told  
2 that he could not return to work unless he had a full release. On or about June 15,  
3 2017, Mr. Brady was provided with information that included a document about the  
4 Americans with Disabilities Act (“ADA”). This was the first time Mr. Brady was  
5 made aware by Spring Creek of his rights under the ADA. After receiving the ADA  
6 information, Mr. Brady requested Light Duty from Spring Creek, which was denied.  
7

8  
9 **II. The Basis for Federal Jurisdiction and for Venue in the Division.**

10 The Court has subject matter jurisdiction over this case pursuant to 28  
11 U.S.C. § 1331, which gives district courts jurisdiction over all civil actions arising  
12 under the Constitution, laws, and treaties of the United States. Plaintiff’s claims  
13 include counts based on the American with Disabilities Act (42 U.S.C. § 12101 et  
14 seq) and the Age Discrimination in Employment Act (29 U.S.C. § 12101 et seq.).  
15 The Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a),  
16 which gives the district court original jurisdiction over civil actions where the  
17 matter in controversy exceeds \$75,000 and is between citizens of different states.  
18 The parties agree that both elements of diversity jurisdiction are met in this case.  
19

20  
21 **III. The Factual Basis and Legal Theory of Each Claim or Defense Advanced**  
22 **by the Party.**

23 A. Mr. Brady was qualified to perform the essential functions of his position  
24 with accommodation, however Mr. Brady’s employer refused to make  
25 reasonable accommodations for Mr. Brady, who suffered an adverse

1 action because of his disability. 42 U.S.C. § 12101 *et. seq.*, MCA § 49-2  
2 *et. seq.*

3  
4 B. Mr. Brady is over the age of 40 years old, which places him in a protected  
5 group of individuals. After Mr. Brady was discharged as a result of his  
6 age, his position and essential job duties were given to a younger  
7 individual. Mr. Brady also suffered age discrimination on the basis of  
8 disparate treatment and disparate impact. 29 U.S.C. § 12101 *et. seq.*, MCA  
9 §§ 49-2 and 49-4 *et. seq.*  
10

11 **IV. Computation of Damages.**

12 Mr. Brady's damages are not fully known and will be determined by a jury.  
13  
14 Mr. Brady has incurred front pay, back pay, impact on his benefits, as well as  
15 emotional distress.

16 **V. The Pendency or Disposition of any Related State or Federal Litigation.**

17 Plaintiff is not aware of the pendency or disposition of any related state or  
18 federal litigation.  
19

20 **VI. Proposed Additional Stipulations of Fact not Included in the Statement**  
21 **of Stipulated Facts, *see* L.R. 16.2(b)(3), and the Parties' Understanding of**  
22 **What Law Applies.**

23 Plaintiff proposes no additional facts to those stated in the Statement of  
24 Stipulated Facts.

25 **VII. Proposed Deadlines Relating to Joinder of Parties or Amendment of the Pleadings.**

The parties agree that the deadline to join additional parties and/or amend the pleading without leave of Court should be November 30, 2018, as outlined in the Joint Discovery Plan.

**VIII. Identification of Controlling Issues of Law Suitable for Pretrial Disposition.**

Plaintiff will be moving for Summary Judgment on the claims alleged in his Complaint.

**IX. The Name, City, and State of Current Residence of Each Individual Known or Believed to Have Information That may be Used in Proving or Denying any Party's Claims or Defenses, and a Summary of that Information. If Known, the Address and Telephone Number of the Individual Must be Provided to all Counsel on Request.**

A. Leo Brady  
C/O Roberts | Freebourn, PLLC  
1325 W. 1<sup>st</sup> Ave Ste. 303  
Spokane, WA 99201

Mr. Brady has information of the facts underlying the allegations in the Complaint, including knowledge surrounding his health, employment, discrimination and damages.

B. Anntoinette (Ann) Slepitis-Brady  
C/O Roberts | Freebourn, PLLC  
1325 W. 1<sup>st</sup> Ave Ste. 303  
Spokane, WA 99201

1 Ms. Slepitis-Brady has information of the facts underlying the allegations in the  
2 Complaint, including knowledge surrounding Mr. Brady's health, employment, and  
3 discrimination.  
4

5 C. James Elliot, MD  
6 2900 12<sup>th</sup> Ave. No. 140W or 100E  
7 Billings, MT 59101

8 Dr. Elliot has information of the facts underlying the allegations of Mr. Brady's  
9 Complaint, including knowledge surrounding Mr. Brady's health before and after  
10 his surgery.

11 D. Todd Hull, PA-C  
12 2900 12<sup>th</sup> Ave. No. 140W or 100E  
13 Billings, MT 59101

14 Mr. Hull has information of the facts underlying the allegations of Mr. Brady's  
15 Complaint, including knowledge surrounding Mr. Brady's health before and after  
16 his surgery.

17 E. Kara Bateson, MPT  
18 51 E. 1<sup>st</sup> St.  
19 Sheridan, WY 82801  
20 307-672-5000

21 Ms. Bateson has information of the facts underlying the allegations of Mr.  
22 Brady's Complaint, including knowledge surrounding Mr. Brady's health.

23 F. Lyle Rasmussen  
24 P.O. Box 779  
25 Osage Beach, MO 65065

1 Mr. Rasmussen has information of the facts underlying the allegations of Mr.  
2 Brady's Complaint, including knowledge surrounding Mr. Brady's health.

3 G. Dan Doke  
4 P.O. Box 59  
5 Ranchester, WY 82838

6 Mr. Doke has information regarding the duties and responsibilities of a  
7 Control Room Operator at Spring Creek. Mr. Doke will also be able to testify that  
8 Mr. Brady was asked to take on Mr. Doke's duties as an accommodation for Mr.  
9 Doke when he returned to work after surgery.

11 H. Tom Phillips  
12 361 Adkins Valley Ln.  
13 Sheridan, WY 82801  
14 406-757-2581

15 Mr. Phillips has knowledge of Spring Creek Mine's actions relative to Mr.  
16 Brady, his duties, and Spring Creek Mine's policies and practices.

17 I. Ned Szatkowski  
18 822 Victoria St.  
19 Sheridan, WY 82801  
20 406-757-2581

21 Mr. Szatkowski has knowledge of Spring Creek Mine's actions relative to Mr.  
22 Brady, his duties, and Spring Creek Mine's policies and practices.

23 J. Steve Apperson  
24 P.O. Box 542  
25 Story, WY 82842  
406-757-2581

1 Mr. Apperson has knowledge of Spring Creek Mine's actions relative to Mr.  
2 Brady, his duties, and Spring Creek Mine's policies and practices.

3 K. Jean Fox  
4 67 Lakeshore Dr.  
5 Decker, MT 59025  
6 406-757-2581

7 Ms. Fox has knowledge of Spring Creek Mine's actions relative to Mr. Brady,  
8 his duties, and Spring Creek Mine's policies and practices.

9 L. Diane Solomon  
10 67 Lakeshore Dr.  
11 Decker, MT 59025  
12 406-757-2581

13 Ms. Solomon has knowledge of Spring Creek Mine's actions relative to Mr.  
14 Brady, his duties, and Spring Creek Mine's policies and practices.

15 M. Tonya Obermire  
16 67 Lakeshore Dr.  
17 Decker, MT 59025  
18 406-757-2581

19 Ms. Obermire has knowledge of Spring Creek Mine's actions relative to Mr.  
20 Brady, his duties, and Spring Creek Mine's policies and practices.

21 N. Mike Mindham  
22 67 Lakeshore Dr.  
23 Decker, MT 59025  
24 406-757-2581

25 Mr. Mindham has knowledge of Spring Creek Mine's actions relative to Mr.  
Brady, his duties, and Spring Creek Mine's policies and practices.



O. Gene Barnes  
435 Burson Street  
Sheridan, WY 82801

Mr. Barnes has knowledge of Spring Creek Mine's actions relative to Mr. Brady, his duties, and Spring Creek Mine's policies and practices.

**X. The Substance of any Insurance Agreement that may Cover any Resulting Judgment.**

Plaintiff does not have an insurance policy that would cover a resulting judgment.

**XI. Status of any Settlement Discussions and Prospects for Compromise of the Case.**

Plaintiff and Defendant Cloud Peak participated in a mediation through the Equal Employment Opportunity Commission. The parties were unable to reach a resolution through that mediation.

**XII. Suitability of Special Procedures.**

Plaintiff does not believe any special procedures are necessary.

Dated this 7<sup>th</sup> of November 2018.

/s/ Kevin Roberts  
KEVIN W. ROBERTS, MSB #11444  
*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of November 2018, a copy of the foregoing document, was duly served by CM/ECF filing to the following:

Clerk, U.S. District Court, Billings Division

Bradley T. Cave – Bcave@hollandhart.com

Brianne McClafferty – BCMcClafferty@hollandhart.com

/s/ Kevin W. Roberts

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*Attorney for Plaintiff*